

SENATE JUDICIARY

EXHIBIT NO. 1

DATE

1/21/09

BILL NO.

SB205

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45-5-206. Partner or family member assault -- penalty. (1) A person commits the offense of partner or family member assault if the person:

- (a) purposely or knowingly causes bodily injury to a partner or family member;
- (b) negligently causes bodily injury to a partner or family member with a weapon; or
- (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than \$300 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly

assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

- (i) with a person licensed under Title 37, chapter 17, 22, or 23;
- (ii) with a professional person as defined in 53-21-102; or
- (iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail.

History: En. Sec. 1, Ch. 700, L. 1985; amd. Sec. 1, Ch. 480, L. 1989; amd. Sec. 257, Ch. 800, L. 1991; amd. Sec. 2, Ch. 425, L. 1993; amd. Sec. 51, Ch. 18, L. 1995; amd. Sec. 10, Ch. 350, L. 1995; amd. Sec. 2, Ch. 245, L. 1997; amd. Sec. 5, Ch. 484, L. 1997; amd. Sec. 8, Ch. 432, L. 1999; amd. Sec. 6, Ch. 503, L. 2001; amd. Sec. 1, Ch. 438, L. 2003.

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45-5-232. Offender intervention counseling referral. (1) The court shall notify the offender intervention program of the court's sentence and the court's judgment ordering the offender to complete a preliminary assessment and all recommended counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment.

(2) A copy of the investigative criminal justice report related to the offense charged must be sent to the offender intervention program to assist counselors in completing the offender's assessment, counseling, referrals, and psychoeducational group counseling. Before the report is sent, information in the report that relates to the victim's location or does not relate to the charged offense must be deleted.

(3) The referral of the offender's investigative report to the offender intervention program does not violate the confidentiality provisions under Title 44, chapter 5. The court shall adopt and the offender intervention program must include confidentiality procedures to protect the privacy rights of the victim and offender.

History: En. Sec. 2, Ch. 503, L. 2001.

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45-5-233. Report to court or probation officer. (1) The head of the offender intervention program shall report to the court and the offender's probation officer. The report does not breach confidentiality.

(2) The head of the offender intervention program shall report to the court or the offender's probation officer, if the offender is assigned a probation officer, when:

- (a) the offender has started the program;
- (b) the offender has completed the assessment and the program has established recommendations for counseling, referrals, and attendance at psychoeducational groups, as well as other recommended treatment, including chemical dependency treatment;
- (c) the offender has violated the offender intervention program rules related to attendance, the use of violence, and the use of recreational intoxicants; and
- (d) the offender has completed the program.

History: En. Sec. 3, Ch. 503, L. 2001.

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45-5-234. Offender intervention counseling confidentiality. (1) Offender intervention programs must have policies and procedures to protect the confidentiality of the offender and the victim. The investigative criminal justice report may be used within the offender intervention counseling sessions and psychoeducational groups after precautions are taken to protect confidentiality.

(2) The counselor may contact the victim of the assault. The counselor may notify the victim that the offender intervention program is not a guarantee that the offender will not be violent. The victim may be asked to provide information about the most recent offense, the offender's history of violence, the offender's use of recreational intoxicants, the offender's use of power and control over the victim, and whether the offender has committed another offense. All precautions must be taken to prevent this contact from increasing the victim's danger.

(3) The counselor shall, when possible, warn the victim if the offender exhibits behavior or makes statements in a group meeting that indicate imminent danger to the victim. If the counselor is unable to tell the victim this information, information about these high-risk behaviors must be given to the local victim advocacy agency. This contact does not violate the offender's right to confidentiality.

History: En. Sec. 4, Ch. 503, L. 2001.

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45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, a staff person of a correctional or detention facility, or a health care provider, as defined in [50-4-504](#), including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

(i) during or after an arrest for a criminal offense;

(ii) while the person is incarcerated in or being transported to or from a state prison, a county, city, or regional jail or detention facility, or a health care facility; or

(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed in district court, in which case the district court has jurisdiction.

(4) As used in this section, the following definitions apply:

(a) "Bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

(b) "Emergency responder" means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.

History: En. Sec. 1, Ch. 388, L. 1999; amd. Sec. 1, Ch. 292, L. 2005.

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50-4-504. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.
- (2) "Health care" includes both physical health care and mental health care.
- (3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.
- (4) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.
- (5) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

History: En. Sec. 11, Ch. 378, L. 1995; amd. Sec. 205, Ch. 42, L. 1997; amd. Sec. 1, Ch. 188, L. 1997; amd. Sec. 97, Ch. 114, L. 2003; amd. Sec. 2, Ch. 206, L. 2003.

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